IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16523 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVINDRA HIRALAL CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16523 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS. PAURAMI SHETH, LD. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. In this petition under Article 226 of the

Constitution of India, the petitioner has been challenging the order of detention dated 4-2-2003 (Annexure-A) passed by respondent no.2 under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 ('PBM Act'), as illegal, invalid, null & void, arbitrary, suffering from non application of mind and violative of Article 14, 21 and 22 of the Constitution of India.

2. The petitioner has been dealing in solvent in the name & stye of M/s. Hira Petrochemicals Pvt. Ltd. Village Patonda, Taluka & District Nandurbar, Maharashtra State; that the Jt. Director (investigation), Ministry of Petroleum & Natural Gas, New Delhi, Anti Adulteration Cell carried out surprise checking on 23-12-2002 of Tanker No. GJ-5/V-4846 near hotel Satlej, Ankleshwar. At that time certain irregularities and illegalities were found with respect to bill for Rs.1,42,800/- in the name of M/s. Shantinath Chemicals, Khewar Road, Bahdgadh, Sonepat, Hariyana. The case was then handed over to Mamlatdar, Ankleshwar for further inquiry. On Mamlatdar's inquiry with the tanker driver it was revealed that the seized quantity of 12 KL O.C.S. hydro carbon stored in the said tanker was worth Rs.1,65,648/-, and the said tanker also contained stock of solvent. Mamlatdar, Ankleshwar, therefore carried out detailed and thorough inquiry and samples of the petroleum liquid were taken and sent to the laboratory for analysis and it has been reported that the seized liquid stock is of petroleum hydrocarbon liquid. It was also revealed from the statement of driver Montu Yadav that the bill of solvent was fake one and the stock in tanker was not to be sent to Nandarbar, Sonepath Hariyana but was to be emptied at petrol pump in Ankleshwar as per instructions of his employer. During the investigation it was also revealed that the name of Shri. Mahendra Singh Daulatsingh Panjrolia was recorded as the owner of the aforesaid tanker R.C. Book and the said tanker has been transferred by giving false address of the tanker owner without any consultation. All these culminated into passing of the impugned detention order.

3. Learned AGP has placed on record affidavit in reply by respondent No. 1 to 3 and Ms. PJ Davawala, Learned Addl. Counsel for Central Govt. has placed on affidavit on behalf of respondent No.4. Both are kept on record.

4. Mr. H.R. Prajapati, learned advocate has placed on record affidavit-in-reply on behalf of the petitioner to the affidavit in reply on record.

5. It has been submitted by Mr. Prajapati for the petitioner that the impugned order is liable to be quashed and set aside as there is no subjective satisfaction recorded by the detaining authority and there is no explanation as to why appropriate proceedings under the Essential Commodities Act is not considered proper. It is further contended that in the detention order it has been mentioned as follows :-

" You being the Director of Hira Petrochemical Pvt. Ltd., Nandurbar, you are committing the serious malpractices by preferring bogus false bills, by selling the stock of solvent in black market thereby enriching financial gain. By doing this, you are harming the public interest and therefore you are acting prejudicial to the maintenance of supplies of Commodities essential to the community. For preventing your such activities with immediate effect, for the reasons shown in your detention order, actin can be taken under section 3, 7 of the Essential Commodities Act, 1955 in he court of law. However, by adopting such steps it would consume more time, and if such step is taken, you may be released by the competent court on bond and there is every probability that you may continue such malafide activities and this alternate step is not sufficient to prevent you from such serious illegal activities. If your such illegal activities of black marketing are not prevented, immediately, your such illegal activities would harm at large to public social interest. As you can run the business as Chairman therefore, your immediate detention is necessary and essential. I am satisfied to pass order of detention against you, under the prevention of black marketing and in exercise of powers conferred in me upon under section 3 (2) of the Essential Commodities Maintenance of Supply Act, 1980, I, passed the order of detention against you on 4-2-2003. "

Mr. Prajapati contents that on identical ground this court has released detenu from detention as the detaining authority has not considered extraneous material without there being any cogent material on record for coming to such conclusion. Mr. Prajapati has placed reliance on the judgment rendered in Special Civil Application No. 11004 of 2002 (Coram: P.B. Majmudar, J); Special Civil Application No. 11335 of 2001 (Coram: A.L. Dave, J) and also on the decision in Special Civil

Application No. 293 of 2003 (Coram: P.B. Majmudar, J).

In Special Civil Application No. 11335 of 2001 in para-5 Learned Single Judge observed as under:-

" Para-5. Having regard to rival contentions, at the outset, it has to be noted that despite a close scrutiny of the affidavit in reply, this Court is not able to find any satisfactory explanation to support the observations made in para 12 of the grounds of detention. Learned AGP has failed to extend any plausible explanation to support the observations made in this paragraph. The observations made in the paragraph indicate that the detaining authority recorded a satisfaction that resorting to detention under P.B.M. Act is the only remedy that can be resorted to in order to prevent the detenu from pursuing his activities. For coming to this conclusion while considering lesser drastic remedy, the authority observed that if the license is cancelled or suspended, the detenu may create legal complications and may start business in the name of his relative or associates and may continue his activities. There is no material for drawing this conclusion. Likewise, in this very paragraph, it is observed by the detaining authority that if a complaint is lodged under Sections 3 and 7 of the Essential Commodities Act, the applicant may get himself released on bail or may obtain an injunction and continue his activities. It is not possible to reconcile of as to how in absence of even a complaint, the authority could have inferred that the petitioner will apply for bail, will obtain bail and will continue his activities. A similar question arose before the Apex Court in the case of Amritlal and other v. Union Government through Secretary, Ministry of Finance and others reported in A.I.R. 2000 S.C. 3675, where even though a prosecution was lodged and the detenu was arrested, but had not moved bail application, an inference that he is likely to move an application for bail was considered to be not sufficient material for exercising powers under Section 3 P.B.M. Act. Here there is not even a complaint and, therefore, this inference for coming to a conclusion that detention under the P.B.M. Act is the only remedy that can be resorted to cannot be accepted in law. "

It would therefore be very clear from the above observations that the satisfaction recorded by the detaining authority is without any cogent material which must be available before drawing such an inference and the order therefore cannot be permitted to be stand.

6. Similar view has been taken in Special Civil Application No. 293 of 2003 and in Special Civil Application No. 11004 of 2002. In view of the above the detention order dated 4-2-2003 (Annexure-A) passed by respondent no.2 under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980,is liable to be set aside and quashed.

7. In the result the petition is granted. The order of detention dated 4-2-2003 (Annexure-A) passed by Respondent No.2 under the provisions of Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980, is set aside and quashed. The petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule made absolute. Direct service permitted.

Dt: 29-1-2004 (N.G. Nandi, J)

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